



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/149793

PRELIMINARY RECITALS

Pursuant to a petition filed June 05, 2013, under Wis. Admin. Code §DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance (MA), a telephonic hearing was held on August 29, 2013, at Racine, Wisconsin.

The issue for determination is whether the Division of Hearings and Appeals (DHA) has authority to order an increase in the skilled nursing rate above the maximum rate established by the Department of Health Services in accordance with Federal law.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Jenny Flemal, Regional Director for Family Care
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Racine County and a member of the Family Care Program (FCP).
2. Since approximately August of 2007 she has received FCP funding for 24 hour Registered Nurse (RN) care via Self Directed Supports (SDS).
3. In November 2011 the CMO discovered that petitioner's budget for 24 hour RN care exceeded the MA allowable rate of \$23,863.70 per month (\$32.69/hour). Her budget had been determined at the rate of \$29,723.75 per month. Since that time the CMO has attempted to work with petitioner's parents to develop a budget within the MA rate and find options to resolve the matter so that petitioner's undisputed need for 24 hour RN care would not be disrupted.
4. On January 11, 2013 the CMO requested that the Department of Health Services (DHS) pay over the MA fee for service reimbursement rate. See Exhibit 2. On June 12, 2013 the DHS denied that request. See Exhibit 3.
5. On May 23, 2013 the CCI issued a Notice of Action to petitioner stating that it was reducing her budget from \$29,723.75/month to \$23,863.70/month because her SDS budget had to be in compliance with the MA skilled nursing rate. See Exhibit 7.

DISCUSSION

The Family Care Program (FCP), which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized under Wis. Stats., §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10. The program is operated and administered in each county by a Care Management Organization (CMO), which in this case is Community Care, Inc.

The only issue in this case is whether the budget for petitioner's RN services which provide her 24 hour care can be increased. However, the first issue I must determine is whether or not I have jurisdiction to address it. The answer to that is 'no'. According to a Final Decision issued on May 2, 2013 (DHA Final Decision No. FCP 134141) by Kitty Rhoades, Deputy Secretary of the Department of Health Services, the Division of Hearings and Appeals does not have authority to order an increase in the nursing rates. In part, that Final Decision found:

...there is no suggestion in the Family Care statute, rules or CMO Contract that the amount of an enrollee's budget is subject to challenge via a fair hearing request. If there is any room for doubt under the above authorities as to whether a SDS enrollee is entitled to a fair hearing to challenge the amount of the enrollee's budget, that doubt is resolved by the terms of the waiver application, which provides that "[t]he budget amount is not appealable, but the participant may appeal that the care plan that resulted in the budget amount does not meet his or her needs. Waiver Application, Appendix E-2.

None of the foregoing is to suggest that a SDS enrollee is without legal recourse with respect to the adequacy of the enrollee's budget or the enrollee's legal entitlement to be served in the most integrated setting appropriate to his or her needs. For one thing, a SDS enrollee who believes the SDS budget is inadequate to support the enrollee in the most integrated appropriate setting appropriate to his or her needs may voluntarily disenroll from SDS and re-enroll in regular Family Care; the CMO is then required to "provide services in the most integrated residential setting consistent with the member's desired outcomes, preferences and identified needs, and that is cost-effective when compared to alternative services that could meet the same needs and support similar outcomes." CMO

Contract, Article V.J.2.c. Moreover, a SDS enrollee may contest any “decision, omission or action of a care management organization” by sending a “written request for review by the unit of the department that monitors care management organization contracts;” in turn, the unit is required to “review and attempt to resolve the dispute,” and “[i]f the dispute is not resolved to the satisfaction of the enrollee, he or she may request a [fair] hearing... .” Wis. Stat. §46.287(2)(b).

The Deputy Secretary's Final Decision here leads me to conclude that the same rationale applies in this case. As such, I can only conclude I do not have jurisdiction over the request to increase petitioner's budget for 24 hour RN care via SDS.

CONCLUSION OF LAW

That the DHA does not have authority to order an increase in the nursing rates for the 24 hour RN care petitioner receives via SDS under the Family Care Program.

THEREFORE, it is

ORDERED

That the petition for review herein is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

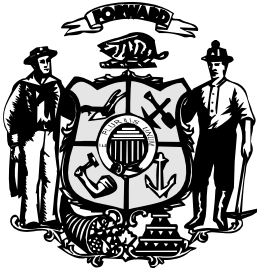
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of August, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 30, 2013.

Community Care Inc.
Office of Family Care Expansion